

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IT'S A NEW 10, LLC, a Florida Limited Liability Company,	:	ECF CASE
	:	Civil Action No.: 17-cv-4231
Plaintiff,	:	District Judge: J. Paul Oetken
v.	:	
HARMON STORES, INC., A Delaware Corporation and BED, BATH & BEYOND, a New York Corporation,	:	
	:	
Defendants.	:	
	x	

**DECLARATION OF MICHAEL CIRILLI
IN SUPPORT OF DEFENDANTS' BRIEF IN OPPOSITION TO
PLAINTIFF'S ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION**

**(CONTAINS CONFIDENTIAL INFORMATION
NOT TO BE FILED ON ECF)
(REDACTED VERSION TO BE FILED ON ECF)**

I, MICHAEL CIRILLI, declare as follows:

1. I am the Divisional Merchandise Manager for Harmon Stores, Inc., in charge of health, beauty and private label products, including hair care products. I have held this position for about three years. By virtue of my position, I am also familiar with health, beauty and private label products, including hair care products sold at Christmas Tree Shops and Bed Bath & Beyond stores.

2. Before my position with Harmon, I also worked in the retail aspects of the health and beauty product industry, including hair care products, for 18 years, at such well-known retailers as Duane Reade and Rite Aid. Thus, I have 21 years of total experience in this sector.

3. I am familiar with the health and beauty care products, including hair care products, sold at Harmon, Christmas Tree Shops and Bed Bath & Beyond stores (collectively

hereafter the “Bed Bath & Beyond Stores”). Because of my experience, I am generally familiar with how hair care products, both national brands and private label brands, are sold by the Bed Bath & Beyond Stores and other retailers including those for whom I have worked in the past.

4. It is common in the health, beauty care and private label industry for retailers to offer national brand equivalents (“NBE”) to compete with products sold under proprietary, national brands. NBE products are commonly referred to as private label or store brands. Private label brands offer consumers product choice. A consumer can purchase a private label product similar to a branded product, but at a value price.

5. Private label or store brand products are, to the best of my information and belief, offered by every major retailer in the health and beauty care field. For example, based on my retail merchandising experience working for Harmon, Duane Reade and Rite Aid, I know that these well-known chains offer extensive private label options for consumers. Likewise, the Bed Bath & Beyond Stores offer extensive private label brand product choices for consumers. Harmon stores stock over 1,000 different private label brand product SKUs of which over 65 SKUs are for HARMON FACE VALUES hair care products. Exhibit A contains screen shots from Harmon Stores’ website, www.harmondiscount.com, of an exemplary array of HARMON FACE VALUES private label products for hair care products. Exhibit B is a screen shot from the Harmon Stores website showing “Featured Brands” which prominently includes the HARMON FACE VALUES private label brand.

6. Throughout the health and beauty care industry, including at the Bed Bath & Beyond Stores, private label products are sold in the same area as or next to the brand product with which the private label product competes. Thus, the HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold next to the plaintiff’s

IT'S A 10 miracle leave-in conditioner plus keratin product. This product positioning is done to permit consumers to evaluate which product they believe best fulfills their purchasing desires.

7. The HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold in 283 Bed Bath & Beyond Stores. Removing this product from store shelves in each of these 283 stores; ensuring that products in inventory are not inadvertently placed on shelves; and checking that unopened/unused products that are returned are not put back on shelves, would require a substantial expenditure of time and human resources. Removing HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product from shelves requires sending knowledgeable personnel to the hair care section where the HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product is sold and removing it from that shelf space; carefully perusing the entire hair care aisle and, indeed, every aisle in the store to inspect whether a consumer put a HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin in the wrong spot in the hair care aisle; disrupting the in-store customer experience during product removal; and inspecting the entire store to see if any HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin product was placed back on a shelf in an area of the store unrelated to hair care. Similar vigilance is required in the stock room and with returns to ensure that product is not inadvertently reshelfed. This requires ongoing vigilance by both trained stock personnel and store managers. Costs involved in these activities in terms of actual expenditures and management attention are significant. For example, in Harmon stores alone, the task of removing HARMON FACE VALUES INSTANT THERAPY leave-in conditioner with keratin products, which currently number approximately [REDACTED] units, from the shelves of Harmon stores would take more than [REDACTED]. [Contains Confidential Information]

I declare under penalty of perjury that the foregoing is true and correct and that statements made based on information and belief are believed to be true and correct.

Dated: June 23, 2017

By: Michael Cirilli
Name: Michael Cirilli
Title: Divisional Merchandise Manager
For Harmon Stores Inc.

EXHIBIT A

Bed Bath & Beyond buybuy BABY Cost Plus World Market Christmas Tree Shops Of a Kind One Kings Lane Spend \$50 More for Free Shipping 0 Items | \$0.00  YOUR CART



 FREE STANDARD SHIPPING
On Any Purchase of \$50 or more

 FIND A STORE | CONTACT US | FAQS | Sign up for Offers

Search



BEAUTY SKIN CARE

HAIR CARE

PERSONAL CARE

HEALTH

TRAVEL

BABY & KIDS

MORE

Shop by
Brand

NARROW YOUR SEARCH

Price

Less than \$5 (11)
\$5 and \$10 (24)
\$10 and \$15 (2)
\$15 and \$20 (4)

Items per page:

24

Sort by:

Relevance

1 2 NEXT >

Displaying 1 - 24 of 41 results for harmon face values shampoo

Search Results for "harmon face values shampoo"

			
Harmon Face Values Hair Therapy Moisture Shampoo 16 oz \$6.99 BUY NOW	Harmon Face Values Hair Therapy Moisture Shampoo 32 oz \$9.99 BUY NOW	Harmon Face Values Step One Shampoo 16 oz \$6.99 BUY NOW	Harmon Face Values Coconut Milk Shampoo 21 oz \$5.99 BUY NOW
			
Harmon Face Values Brazilian Shampoo 21 oz \$5.99 BUY NOW	Harmon Face Values Everyday Clean 2-in-1 Dandruff Shampoo 14.2 oz \$3.49 BUY NOW	Harmon Face Values Everyday Clean Dandruff Shampoo 14.2 oz \$3.49 BUY NOW	Harmon Face Values 16 oz Tea Tree Shampoo \$7.99 BUY NOW
			
Harmon Face Values Baby Shampoo 15 oz \$2.99			

[BUY NOW](#)

Harmon Face Values Argan Shampoo 21 oz
\$6.99
[BUY NOW](#)



Harmon Face Values Therapeutic Gel Shampoo 8.5 oz
\$3.49
[BUY NOW](#)



Harmon Face Value Color Caring Shampoo 16 oz
\$9.49
[BUY NOW](#)



Harmon Face Values Colorcare Hydrating Shampoo 10.1 oz
\$15.59
[BUY NOW](#)



Harmon Face Values Colorcare Volume Shampoo 10.1 oz
\$15.59
[BUY NOW](#)



Harmon Face Values Hair Therapy Moisture Conditioner 32 oz
\$12.99
[BUY NOW](#)



Harmon Face Values Hair Therapy Moisture Conditioner 16 oz
\$6.99
[BUY NOW](#)



Harmon Face Values Itchy Scalp Shampoo 11 oz
\$4.99
[BUY NOW](#)

Harmon Face Values Green Apple 2-in-1 Shampoo + Conditioner 14.2 oz
\$3.49
[BUY NOW](#)

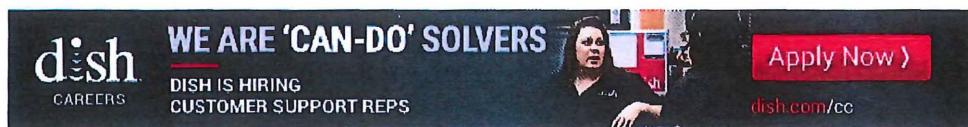
Harmon Face Values Dandruff Shampoo 23.7 oz
\$4.99
[BUY NOW](#)

Harmon Face Values Colorcare Hydrating Shampoo 10.1 oz
\$15.59
[BUY NOW](#)

Harmon Face Values 2-in-1 Dandruff Shampoo 23.7 oz
\$5.29
[BUY NOW](#)

Harmon Face Values Colorcare Volume Shampoo 10.1 oz
\$15.59
[BUY NOW](#)

[1](#) [2](#) [NEXT ▶](#)



enter e-mail address

SUBMIT

**100% SATISFACTION
GUARANTEE**

You can return anything bought online either through the mail or any store. Help is always available at 1-866-HARMON-1 (1-866-427-6661)

OUR PARTNERSHIPS

Nothing is more important to Harmon Stores than you. This is why we have partnered with the nonprofit organization National Women's Health Resource Center (NWHRC).

**COMPANY INFO**

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Investor Relations
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Employment Opportunities
Product Safety & Recalls

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User Privacy

Visit our other sites:



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EXHIBIT B

FREE STANDARD SHIPPING
On Any Purchase of \$50 or more[FIND A STORE](#) | [CONTACT US](#) | [FAQs](#) | [Sign up for Offers](#)

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SKIN CARE

HAIR CARE

PERSONAL CARE

HEALTH

TRAVEL

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Neutrogena



REVLON



All Brands

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A

A&D	AAA	Abreva	Absolute!
Ace	Acidophilus	AcneFree	Acnomel
ACT	Action	Acu-Life	Adorn
Adsorbion	Advil	Afrin	Agadir
Ahava	Airborne	Airplus	Alba Botanica
Allergan	Andrea	Alcon	Aleve
Alka-Seltzer	Allegra	Allegro	Almay
Always	Ambl	Amope	Andalou Naturals
AquaFresh	Aquaphor	Ardell	Argan Oil
Arm & Hammer	Arrid	As I Am	As Seen on TV
Astroglide	Atkins	Aura Cacia	Aussie
Australian Gold	Avalon Organics	Aveeno	Axe

B

BabyGanics	Balance Bar	Balneol	Ban
Banana Boat	Band-Aid	Basics	Bausch + Lomb
Bayer	Bed Head	Beard Guyz	Benadryl
Bengay	Betty Dain	Bic	Bikini Zone
Biore	Biotene	BIOSILK	Blistex
Bodycology	Bonne Bell	Boudreux's	Braun
Breathe Right	Broadway Nails	Brut	Burt's Bees
Buf-Puf	buybuyBaby	BullFrog	

C

c. Booth	Caboodles	Calgon	California Baby
Caltrate	Carefree	Caress	Carmex
Centrum	CeraVe	Cetaphil	ChapStick
CHI	Chloraseptic	Citracal	Clairol